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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **R. S .A. No. 4726 of 2003**
Date of decision: 22.11.2007

Vinod Kumar and another **...Appellants**

Versus

Kamla and others **...Respondents**

2. **R. S .A. No. 4727 of 2003**

Vinod Kumar and another **...Appellants**

Versus

Kamla and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Navin Mahajan, Advocate for the appellants.

Mr. L.N.Verma, Advocate for respondents No. 1 and 2.

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RAJESH BINDAL, J.

This order will dispose of two appeals bearing Regular Second Appeal Nos. 4726 and 4727 of 2003 filed against the judgment and decree dated 14.8.2003 passed by learned Additional District Judge, Sirsa whereby two appeals arising out of one suit had been disposed of by a common order.

The appeals arise out of suit filed by respondents No.1 and 2/plaintiffs for declaration to the effect that they were entitled to 1/12th and 1/24th share respectively being legally wedded wife of appellant No.1/defendant No.1 and unmarried daughter of defendant no.1 respectively in the land measuring 988 kanals 9 marlas comprising in Khewat No.428, Khatuni No.688 and 1/24 share and 1/48 respectively in the land measuring 300 kanals 18 marlas, comprised in Khewat No.427 Khatuni No.686, 687 situated in village Jamal and respondent no.1/plaintiff no.1 was further

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entitled to 13/168 share and respondent no.2/plaintiff no.2 was entitled to 13/336 share of land measuring 271 kanals 15 Marlas comprised in Khewat No. 114 and also respondent no.1/plaintiff No. 1 was entitled to 1/1344 share and the respondent no.2/plaintiff no.2 was entitled to 1/2688 share respectively in the land measuring 5 kanals 19 Marlas comprised in Khewat No.117 situated in village Kutiana Tehsil and District Sirsa. It is further prayed that appellant no.2/defendant no.3 being not the legally wedded wife of appellant no.1 was not entitled to any share. Prayer for setting aside of judgment and decree dated August 7, 1995 in Civil Suit No.1087 of 1995 and mutation No.3558 was made and relief of possession and mesne profit is also prayed for.

It is alleged that respondent No.1 Kamla married appellant No.1 Vinod Kumar on February 5, 1967 and from the wedlock two issues, namely, Varenda and Smt. Sharmila were born. Later on Vinod married with appellant No.2 Sumitra Devi. The second marriage being a nullity, Sumitra had no right qua the properties of the family as well as properties of Vinod Kumar. Respondent no.3/defendant no.2 was born from the alleged wedlock of Vinod with Sumitra. Vinod inherited property from his father through family settlement, which was recorded in his name as owner thereof. Marriage of Sharmila was celebrated and on account of alleged dispute arising at that time, Kamla and her daughter Varenda were shunted out from the house and since then they were living separately. It was at that time that Vinod partitioned his land in two shares i.e. one in favour of Sumitra Devi and another in favour of Surinder Singh, son born to Sumitra Devi. As far as claim of minor daughter Varenda is concerned, it was stated that she will get maintenance and also the marriage expenses and the impugned judgment and decree dated August 7, 1995 passed in Civil Suit No. 1087 of 1995 was to be set aside to that extent. Both the parties being aggrieved against the judgment and decree of the trial Court filed appeals before the Lower Appellate Court.

After considering the material on record, learned Lower Appellate Court while modifying the judgment and decree of the trial Court where earlier judgment and decree dated August 7, 1995 passed in suit

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titled as Surinder Singh Vs. Vinod Kumar modified the same to the extent it granted share of the suit land to Sumitra Devi. As against that Kamla Devi was held to be entitled to get the said share of land. The net effect of the judgment and decree of the Lower Appellate Court, which is impugned in the present appeal is that the son born out of the second wedlock with Sumitra Devi got 50% of the suit property whereas Kamla being a legally wedded wife of Vinod Kumar got the other 50% of the suit property.

With these facts on record, in my opinion, considering material on record where admittedly appellant no.1 Vinod Kumar contracted second marriage with Sumitra while his first wife was still alive, complete justice had been done between the parties which does not call for any interference by this Court and that too in an appeal filed by Vinod Kumar and Sumitra Devi once it is proved on record that second marriage contracted by Vinod Kumar with Sumitra Devi was a nullity.

No substantial question of law arises in the appeal.

The appeals are accordingly, dismissed.

November 22, 2007 **(Rajesh Bindal)**
Pka **Judge**

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